

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF RHODE ISLAND

* * * * *

ALBERT L. GRAY, Administrator,*
ET AL,*
Plaintiffs,*

vs.*

CIVIL ACTION
No. 04-312-L

JEFFREY DERDERIAN, ET AL,*
Defendants.*

* * * * *

ANSWER AND JURY CLAIM OF THE DEFENDANT, ABC
BUS, INC. d/b/a ABC BUS LEASING, INC., TO THE
PLAINTIFFS' FIRST AMENDED MASTER COMPLAINT

The defendant, ABC Bus, Inc. d/b/a ABC Bus Leasing, Inc., in the above-captioned matter, hereby makes this its answer to the Plaintiffs' First Amended Master Complaint.

FIRST DEFENSE

PARTIES

Plaintiffs

1-240. The defendant is presently without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 1 through 240 and calls upon the plaintiffs to prove the same.

241-270. No responses are required to paragraphs 241 through 270.

GENERAL ALLEGATIONS AS TO ALL DEFENDANTS

271. The defendant is presently without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 271 and calls upon the plaintiffs to prove the same.

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ALLEGATIONS AGAINST OTHER NAMED DEFENDANTS
AND COUNT I THROUGH COUNT LXXV

272-679. Paragraphs 272 through 679 are not directed to this defendant and therefore do not require a response; however, in the event that these paragraphs are read to be applicable to this defendant, the defendant denies the allegations contained therein.

ABC BUS, INC. d/b/a ABC BUS LEASING, INC.

680. The defendant denies the allegations contained in paragraph 680.

681. The defendant denies the allegations contained in paragraph 681.

682. The defendant denies the allegations contained in paragraph 682.

683. The defendant denies the allegations contained in paragraph 683.

WHEREFORE, the defendant demands that the plaintiffs' complaint against it be dismissed and that judgment enter for the defendant, together with its costs.

COUNT LXXVI

684. The defendant incorporates herein by reference its answers to paragraphs 1 through 271 and 680 through 683 and makes them its answer to paragraph 684 of Count LXXVI.

685. The defendant denies the allegations contained in paragraph 685 of Count LXXVI.

WHEREFORE, the defendant demands that the plaintiffs' complaint against it be dismissed and that judgment enter for the defendant, together with its costs.

COUNT LXXVII

686. The defendant incorporates herein by reference its answers to paragraphs 1 through 271 and 680 through 683 and makes them its answer to paragraph 686 of Count LXXVII.

687. The defendant denies the allegations contained in paragraph 687 of Count LXXVII.

WHEREFORE, the defendant demands that the plaintiffs' complaint against it be dismissed and that judgment enter for the defendant, together with its costs.

ALLEGATIONS AGAINST OTHER NAMED DEFENDANTS
AND COUNTS LXXVIII THROUGH COUNT LXXXI

Paragraphs 688 through 706 of Counts LXXVII through LXXXI are not directed to this defendant and therefore do not require a response; however, in the event that these paragraphs are read to be applicable to this defendant, the defendant denies the allegations contained therein.

SECOND DEFENSE

The acts complained of were not committed by a person and/or entity for whose conduct the defendant was legally responsible.

THIRD DEFENSE

If the plaintiffs prove that this defendant was negligent as alleged, the plaintiffs and/or plaintiffs' decedents recovery, if any, are barred, reduced, or diminished in whole or in part by plaintiffs' comparative negligence under the Comparative Negligence Law of the State of Rhode Island.

FOURTH DEFENSE

The cause of action is barred by reason of the Statute of Limitations.

FIFTH DEFENSE

The court does not have personal jurisdiction and/or subject matter jurisdiction as to the allegations against ABC Bus, Inc. d/b/a ABC Bus Leasing, Inc.

SIXTH DEFENSE

There was insufficient service of process.

SEVENTH DEFENSE

The complaint fails to state a claim upon which relief can be granted.

EIGHTH DEFENSE

The complaint fails to state a claim upon which relief can

be granted, insofar as the plaintiffs have failed to give notice of any claim and/or unsafe condition as required by law, and the defendant was thereby prejudiced, wherefore the plaintiffs are barred from recovery.

NINTH DEFENSE

This defendant states that it had no duty at law or common law to the plaintiffs and/or plaintiffs' decedents, wherefore the plaintiffs are barred from recovery.

TENTH DEFENSE

That to the extent that this defendant had any obligations to the plaintiffs and/or plaintiffs' decedents, such obligations have been fully, completely and properly performed in every respect.

ELEVENTH DEFENSE

There was no negligence, gross negligence, willful, wanton, or malicious misconduct, reckless indifference or reckless disregard of the rights of the plaintiffs and/or plaintiffs' decedents, or malice (actual, legal or otherwise) on the part of this defendant as to the plaintiffs and/or plaintiffs' decedents herein.

TWELFTH DEFENSE

If the plaintiffs prove that this defendant was involved in any of the transactions alleged in the plaintiffs' complaint, this defendant acted in good faith at all times with respect to those transactions, and the plaintiffs are therefore barred from recovery.

THIRTEENTH DEFENSE

If the plaintiffs and/or plaintiffs' decedents were injured or damaged as alleged, the plaintiffs and/or plaintiffs' decedents assumed the risk of such injuries or damage.

FOURTEENTH DEFENSE

This defendant is not liable to plaintiffs' to the extent that the plaintiffs' losses were a result of an unforeseeable intervening and/or superceding civil or criminal act(s).

FIFTEENTH DEFENSE

If the plaintiffs and/or plaintiffs' decedents sustained injuries and/or damages as alleged in the complaint, such injuries and/or damages were caused by the intervening and superseding acts of third persons, which acts this defendant did not and reasonably could not foresee and/or are remote.

SIXTEENTH DEFENSE

In the event that the named plaintiffs are determined not to have standing to bring this action, this defendant asserts such lack of standing as an affirmative defense.

SEVENTEENTH DEFENSE

In the event that this defendant is determined to be a joint tortfeasor, defendant asserts that it is entitled to an allocation of relative degree of fault among all joint-tortfeasors so that the pro-rata share of each defendant can be determined in accordance with the Rhode Island Uniform Contribution Among Tortfeasors Act, R.I.G.L. § 10-6-1, et seq.

EIGHTEENTH DEFENSE

The plaintiffs have failed to join a party or parties necessary for the just adjudication of this matter and have further omitted to state any reason for such failure.

NINETEENTH DEFENSE

That the plaintiffs' claims are barred by estoppel or waiver.

TWENTIETH DEFENSE

The plaintiffs are guilty of laches in bringing this action and are therefore barred from recovery.

TWENTY-FIRST DEFENSE

The plaintiffs' and/or plaintiff decedents' employer or employers were negligent with respect to the matters set forth in the First Amended Master Complaint, that such negligence caused in whole or in part the damages claimed to have been sustained as set forth in the First Amended Master Complaint and that the plaintiffs or plaintiff decedents claiming such damages received workmen's compensation benefits from his or her employer or employers.

If the plaintiffs are entitled to recover against this defendant, which this defendant specifically denies, they are not entitled to recover in the amount set forth in the First Amended Master Complaint because this defendant is entitled to set off any and all the aforesaid workmen's compensation payments against any judgment which might be rendered in the plaintiffs' favor.

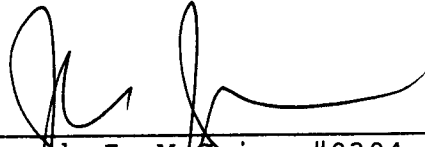
TWENTY-SECOND DEFENSE

This defendant incorporates by reference any and all affirmative defenses asserted by any other defendant not specifically set forth in this Answer and Affirmative Defenses.

JURY CLAIM

THE DEFENDANT HEREBY MAKES CLAIM FOR A TRIAL BY JURY.

Defendant, ABC BUS, INC.
d/b/a ABC BUS LEASING, INC.
By its attorneys,



Joseph J. McGair, #0304
PETRARCA AND MCGAIR, INC.
797 Bald Hill Road
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Date:

2/4/05

CERTIFICATION

I hereby certify that on the 4th day of February 2005, a true copy of the within was mailed to:

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